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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

PENGUIN GROUP (USA) INC.,

Case No. 09 CIV 00528 JGK

Plaintiff,

-against-

AMERICAN BUDDHA,

Defendant.

**DECLARATION OF TARA LYN CARREON IN SUPPORT OF
AMERICAN BUDDHA'S MOTION TO DISMISS
FOR LACK OF PERSONAL JURISDICTION**

Tara Lyn Carreon hereby declares:

1. I am President and sole Director of American Buddha, defendant herein, and state the matters herein of personal knowledge. If called as a witness, I could and would so competently testify.

Personal Background

2. I have a degree in Sociology with a minor in Anthropology from Southern Oregon University, from which I graduated in 1983 Summa Cum Laude.

3. I am the full-time archivist and librarian for the American Buddha Online Library, a project of American Buddha. I am currently studying to take the GRE and in preparation to apply to the University of Arizona for the Masters in Library Science program.

4. I am the sole worker for American Buddha. I make all decisions regarding the operation of American Buddha. Aside from its attorney of record herein, and the company's designated agent for receipt of DMCA notices, American Buddha has no agents that act on its behalf.

Corporate Description of American Buddha

5. American Buddha is an Oregon nonprofit corporation that was incorporated in the State of Oregon on June 8, 2000.
6. I have been President of American Buddha since the date of its incorporation, and thus have complete and accurate knowledge of its business and financial activities.
7. I have lived in Tucson, Arizona since April 2007.
8. American Buddha operates the brick-and-mortar Ralph Nader Library located at 2165 S. Avenida Planeta, Tucson, Arizona 85710. The Ralph Nader Library has a physical collection of hundreds of books, and has issued library cards to 42 members. Library cards are issued only to people who sign the Nader Library / ABOL User Signup Form attached as **Exhibit 1**.
9. American Buddha owns no real estate or personal property, and has no bank accounts, personnel, business associates, or agents in the State of New York. American Buddha has never conducted any business activities in New York, either directly or through any agents, and has received no revenue from residents of the State of New York. American Buddha has sold no products anywhere in the world, and specifically has never sold any products in the State of New York. American Buddha has no sources of revenue whatsoever, via intrastate commerce in Arizona, via interstate commerce in the United States, or via international commerce worldwide. American Buddha has not purposefully directed any of its activities, including the AB Websites, at the residents of New York, or in any way sought to avail itself of the privilege of doing business there.
10. American Buddha is not a commercial entity. American Buddha does not make money from the Internet or from any other source, and, as set forth in detail below, utilizes the Internet for the sole purpose of providing a resource for education and scholarship without regard to the geographic location of its users, and in compliance with the law applicable to all libraries, whether constructed of “bits and bytes” or “bricks and mortar.”

American Buddha’s Compliance With The Requirements of 17 U.S.C. § 108

11. American Buddha operates two websites under the Fair Use and Library Exemptions from Copyright Infringement Liability at 17 U.S.C. §§ 107 and 108, and makes a careful effort to

comply with all the requirements of subsection (a) of Section 108, including: (1) making only one copy of a work available on a website, without any purpose of direct or indirect commercial advantage, (2) keeping the collections of the library and archives open to the public, and (3) including a notice of copyright that appears on any copyrighted work on the webpage where any copyrighted works appear.

12. I have created every webpage at www.naderlibrary.com and www.american-buddha.com (the “AB Websites”) as a labor donation to American Buddha. The AB Websites are intended to advance scholarly knowledge and facilitate access to research material. Each of the AB Websites has its own “Nutch” search engine, which is the same open-source search engine used by the University of Oregon in its library. The two AB Websites address two different types of readers. Naderlibrary.com addresses the interests of political and social scholars, and American-Buddha.com is more oriented toward artistic, philosophical, and spiritual students. The two AB Websites provide the notice required to be posted in library copying facilities under 37 C.F.R. 201.14, which is displayed on a page that is accessed via a prominent link at the top of *every page* entitled “Library Copyright Notice” on Naderlibrary.com, and “American Buddha Online Library Copyright Notice” on American-Buddha.com. The notice reads as follows:

LIBRARY COPYRIGHT NOTICE

(37 C.F.R. 201.14)

The copyright law of the United States (title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specific conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement. This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

13. In compliance with the foregoing policy, I have made available one library copy of each copyrighted work at each AB Website. Allowing people to read that library copy does not

constitute infringement, any more than handing a person a book in the brick-and-mortar Nader Library building and allowing them to read it or check it out constitutes infringement.

American Buddha Has Performed No Act That

Any Person Would Reasonably Anticipate Would Cause An Effect In New York

14. I have never had any reason to anticipate that the AB Websites would cause an effect in New York, and to my knowledge, they never have.

15. In particular, I have never had any reason to think that anyone in New York would utilize the AB Website version of “Oil,” or “The Golden Ass,” or “It Can’t Happen Here” to commit an act of copyright infringement by creating an unlawful copy of any of these books. As explained below, this is because committing such an act of copyright infringement would be so economically counterproductive that no one would engage in it.

The AB Websites Have No Downloadable Text Files of Copyrighted Works

16. The AB websites do not have any files available for downloading that contain copyrighted printed material that is at issue in this litigation. The AB Websites are written entirely in standard Hypertext Markup Language (“HTML”) using Microsoft FrontPage, an HTML editor that produces old-style webpages. Specifically, there are no Portable Document Files (identified by the .pdf file extension) or Word files (identified by the .doc file extension) on the AB Websites that would allow anyone, anywhere to download an entire copy of “Oil!” by Upton Sinclair, “The Golden Ass” by Apuleius, or “It Can’t Happen Here” by Sinclair Lewis. Users cannot, by any method, simply “click to download” any of these works. I am aware that Mr. Kjellberg, one of Penguin’s lawyers, claimed in a prior declaration under penalty of perjury executed March 20, 2009, that he downloaded copies of these books on February 16, 2009. However, there are not, and never have been any downloadable files of those works on the AB Websites.

17. Attached hereto as **Exhibit 2** is a copy of the “source code” for the HTML constituting the webpage for that portion of the naderlibrary.com website that appears in a web-browser as the Table of Contents page of “Oil” by Upton Sinclair on the naderlibrary.com website.

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**Because No Rational Person Would Utilize the HTML Versions of Books on the
AB Websites As A Basis For Copyright Infringement, American Buddha Has
Not Anticipated That Anyone Would Do It In New York or Elsewhere**

18. The only way a user can copy material from the AB Websites is by “copying and pasting” the HTML text from the webpage and into a text file, like a Word or WordPerfect word-processing document. When the HTML text is copied using “Select All” in the web-browser, all of the HTML code visible in **Exhibit 2** transfers with it and is pasted in the word-processing document. In the case of “Oil,” for example, there are 21 chapters to the book, and each chapter appears on a separate webpage. Thus, to copy the text of the entire work into a word processing document requires around five or ten minutes, and the result would simply be to produce a large Word or PDF file 629 pages long. I performed this experiment, Bates-Numbered to illustrate the length of the document and selected the first pages of five representative chapters plus the last page to illustrate, that are attached hereto as **Exhibit 3**.

19. The product of this copying and pasting project is not a book, and still requires a computer to read. I do not believe anyone else has created such a file, except perhaps Mr. Kjellberg.

20. Assuming they had created such a “book file,” if someone wanted to turn the file into a book, I have determined that creating a “bound volume” out of “Oil,” for example, would cost out as follows for three different options. The Cost Detail for each option is attached as **Exhibit 4**.

- a. Cost of printing and binding at a copy shop: **\$67.40**
- b. Cost of printing with personal laser printer, paper purchased at retail cost, and binding at copy shop: **\$46.74**
- c. Cost of printing with personal inkjet printer, paper purchased at retail cost, and binding at copy shop: **\$67.40**

21. Amazon.com offers a used copy of “Oil!” for **\$3.32**, plus shipping of \$3.99, so Amazon shoppers can buy the paperback for \$7.31, as shown in **Exhibit 5**, page 1, a screen-capture of the checkout page. “The Golden Ass” is available used for **\$3.53**, and “It Can’t Happen Here” is available used for **\$2.27**, as shown on **Exhibit 5**, pages 2 and 3. Thus, any rational person who wanted a copy of one of these books would just buy it. Since people in New York are rational, I

am confident that New Yorkers are not using the AB Websites as launching pads for creating infringing copies of books, and thus I have never anticipated that they would.

It Would Cause Great Hardship

To Be Forced To Defend This Lawsuit In New York City

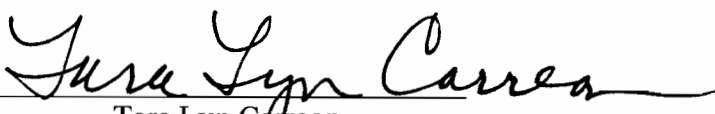
22. American Buddha is not big enough, economically, to defend a suit in New York City. It would cause me great hardship to be forced to defend this lawsuit in New York City. To transport and provide food and lodging for myself and my *pro bono* lawyer to New York for the trial would be very costly, so much so that to fund the project, I would probably have to stop working as the American Buddha librarian and resume employment as a legal secretary at the relatively modest wages that profession commands here in Tucson, and donate all of those funds to American Buddha. Currently, it is very difficult to find employment in Tucson, Arizona, so there is a serious possibility that regardless of how hard I tried, I could not pay the costs of trial, even with a *pro bono* attorney. A trial on the merits of American Buddha's defense to Penguin's claim under 17 U.S.C. § 108 would be greatly aided by expert testimony that would be extremely costly to procure in New York City, whereas here in Tucson, with the University of Arizona and its School of Library Science, it would be considerably more tenable.

Request For Leave Permitting Counsel To Make Telephonic Appearance

23. For the same reasons set forth in the preceding paragraph, that there are no funds available to provide travel, board and lodging for American Buddha's *pro bono* attorney, the Court is respectfully requested to permit him to appear telephonically for the oral argument, if any is scheduled, on this motion.

I declare and affirm, pursuant to 28 U.S.C. § 1746(2), that the foregoing is true and correct under the law of the United States of America, and that this declaration was signed on July 21, 2011 at

Tucson, Arizona.


Tara Lyn Carreon